

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

DAVID C. BISHOP,

Plaintiff

v.

BELL ATLANTIC CORPORATION,

Defendant

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

Docket no. 99-CV-189-B

**ORDER REGARDING EQUITABLE RELIEF**

SINGAL, District Judge

Before the Court is Plaintiff David Bishop's Motion for Equitable Relief (Docket #58), in which Plaintiff requests an award of back pay, prejudgment interest and injunctive relief. For the reasons discussed below, the Court DENIES in part and GRANTS in part Plaintiff's Motion.

**I. BACKGROUND**

The Court held a jury trial on Plaintiff's claims of alleged retaliatory employment discrimination, actionable pursuant to the Maine Human Rights Act, 5 M.R.S.A. § 4552 et seq. Returning a verdict in favor of Plaintiff, the jury awarded him \$250,000 in compensatory damages and \$50,000 in punitive damages.

On a special verdict form, the jury was asked six questions pertaining to liability. Essentially, the questions asked: (1) whether Defendant Bell Atlantic Corporation retaliated against Plaintiff by withholding overtime opportunities from him, (2) whether Defendant retaliated against Plaintiff by withholding payments for overtime hours that he

had worked, (3) whether Defendant retaliated by not issuing rain gear to him, (4) whether Defendant retaliated by giving him inadequate credit for certain work that he performed, (5) whether Defendant retaliated by placing him on an action plan, and (6) whether Defendant retaliated against Plaintiff by suspending him for three days. The jury responded in the negative to the first three questions, and in the affirmative to the final three.

## II. FINDINGS OF FACT

Because the Court must issue a ruling independent of the jury's verdict regarding equitable relief, the Court makes findings of fact and conclusions of law pursuant to Rule 52(a). Regarding the jury verdict as advisory, the Court independently finds the following:

1. Defendant Bell Atlantic Corporation suspended Plaintiff David Bishop for three days without pay in February 2000 because he filed complaints with the Maine Human Rights Commission ("MHRC") on August 26, 1997, February 11, 1998 and February 3, 1999, respectively.
2. Defendant placed Plaintiff on an action plan in November 1999 because he filed complaints with the MHRC.
3. Defendant gave Plaintiff inadequate credit for certain work that he performed on October 18, 1998 because he filed complaints with the MHRC.
4. Defendant did not withhold overtime opportunities from Plaintiff in 1997 and 1998 because he filed complaints with the MHRC.

5. Defendant did not withhold overtime payments from Plaintiff in 1997 and 1998 because he filed complaints with the MHRC.
6. Defendant did not refuse to give Plaintiff rain gear in the spring of 1998 because he filed complaints with the MHRC.

### III. CONCLUSIONS OF LAW

7. By suspending Plaintiff for three days without pay, by placing him on an action plan, and by giving him inadequate credit for certain work that he performed, Defendant Bell Atlantic Corporation unlawfully retaliated against Plaintiff in violation of the Maine Human Rights Act, 5 M.R.S.A. § 4572.
8. Plaintiff is not entitled to an award of back pay.
9. Plaintiff is not entitled to an award of prejudgment interest.
10. Plaintiff is entitled to injunctive relief, specifically, an order directing Defendant to cease and desist from committing or permitting unlawful retaliatory discrimination against Plaintiff.

### IV. DISCUSSION

The Court offers the following discussion regarding the above conclusions of law.

#### A. Liability

To demonstrate unlawful retaliation, a plaintiff must show that (1) he engaged in protected conduct under the Maine Human Rights Act; (2) he suffered an adverse employment action; and (3) a causal connection existed between the protected conduct

and the adverse action. See, e.g., Fennell v. First Step Designs, Ltd., 83 F.3d 526, 535 (1<sup>st</sup> Cir. 1996). Even if the plaintiff proves these three elements, a defendant may still prevail if it successfully demonstrates that its adverse actions were motivated by legitimate nondiscriminatory reasons rather than a retaliatory animus. See id. However, a plaintiff can rebut such a showing by demonstrating that a defendant's purportedly legitimate reasons are merely a pretext for discrimination. See id.

An adverse employment action is any type of discrimination “with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment...” 5 M.R.S.A. § 4572(1)(A). Several types of circumstantial evidence can demonstrate a causal link between the protected act and the adverse act, such as evidence of differential treatment in the workplace, temporal proximity between the protected act and the adverse act, statistical evidence showing disparate treatment, comments by the employer which intimate a retaliatory mindset, or changes in how the employer treats the employee after performing the protected action. See, e.g., Simas v. First Citizens’ Fed. Credit Union, 170 F.3d 37, 51 (1<sup>st</sup> Cir. 1999); Mesnick v. Gen. Elec. Co., 950 F.2d 816, 828 (1<sup>st</sup> Cir. 1991).

In the present case, Plaintiff demonstrated that he filed three charges with the Maine Human Rights Commission. There is no dispute that these were protected acts. Subsequently, Defendant did not give him proper credit for certain work he performed on October 18, 1998, placed him on an action plan and suspended him for three days. Not receiving proper credit negatively impacted Plaintiff's job evaluations, even if only by a small amount. See Simas, 170 F.3d at 48 (“otherwise minor slights, relentlessly

compounded, may become sufficiently ‘adverse’ to warrant relief”). By requiring Plaintiff to telephone supervisors before leaving a job he is unable to finish, the action plan impedes Plaintiff’s efficiency and productivity. As well, the suspension was a disciplinary measure that removed him from work for three days. Therefore, the Court finds that these three events constituted adverse employment actions.

Plaintiff introduced evidence showing that in the course of these three events, Defendant treated him differently from how it treated him prior to the filing of the complaints, and that the company singled him out. The evidence showed that Plaintiff was alone in not receiving adequate credit and that he had always received proper credit prior to filing the MHRC charges. Also, the evidence demonstrated that Plaintiff was the only employee subjected to such an extensive action plan. Finally, Plaintiff offered ample evidence to show that he was suspended unfairly for cutting a certain telephone wire. Witnesses testified that similarly-situated co-workers had not faced suspension, nor any other form of discipline, for similar conduct. In addition, Plaintiff offered evidence that one of his supervisors referred to him as a “festering pus sore on my ankle” which was probative of a retaliatory mindset.

The Court therefore finds that Plaintiff participated in protected acts, that Defendant took adverse actions against him, and that those adverse actions were causally connected to the protected acts. Furthermore, the Court finds no legitimate nondiscriminatory reasons for Defendant’s conduct. Thus, the Court finds that Defendant is liable for unlawful employment discrimination pursuant to the Maine Human Rights Act.

## B. Back Pay

Under the Maine Human Rights Act, the Court may award an employee back pay to make him whole for employment discrimination. See 5 M.R.S.A. § 4613(2)(B)(2); Kopenga v. Davric Me. Corp., 727 A.2d 906, 908-09 (Me. 1999); Rozanski v. A-P-A Transp. Inc., 512 A.2d 335, 342 (Me. 1986). Plaintiff argues that he is entitled to back pay in the amount of \$8,907 because Defendant interfered with his overtime opportunities and compensation.

The jury and this Court, however, agree that Defendant did not retaliate against Plaintiff by withholding overtime opportunities or overtime payments. Therefore, the Court concludes that Plaintiff does not need to be made whole regarding any alleged interference with his overtime.

Furthermore, even if the Court found that Plaintiff was entitled to an award of back pay, the Court is not prepared to calculate the appropriate amount. Plaintiff presented evidence that his yearly income from Defendant was \$76,497 in 1996, but only \$67,590 in 1997, a \$8,907 reduction that Plaintiff argues reflects the amount of overtime compensation that Defendant withheld from him in 1997. The Court, however, is not persuaded that this change in salary indicates the amount of overtime income lost, and the Court would be engaging in speculation to award such a sum in back pay. Therefore, Plaintiff is not entitled to an award of back pay regarding overtime.

Additionally, although Plaintiff does not specifically ask for back pay regarding the unpaid three-day suspension, the jury and the Court agree that the suspension amounted to unlawful retaliation. Plaintiff, however, never presented any evidence

regarding his daily wage, what he would have earned over those three days, or whether he regained the lost work time at a later date. Again, the Court declines to speculate on any potential back pay due to Plaintiff for the three-day suspension.

### C. Prejudgment Interest

Plaintiff requests an award of prejudgment interest based on federal courts' equitable discretion to make a plaintiff whole and to deter defendants from future wrongdoing. See, e.g., Criado v. IBM Corp., 145 F.3d 437, 446 (1<sup>st</sup> Cir. 1998). Plaintiff, however, filed suit under Maine state law, which mandates an award of prejudgment interest unless Defendant makes a good cause showing that prejudgment interest should be waived. See 14 M.R.S.A. § 1602. Because Plaintiff prevailed on a state law claim only, without seeking relief based on any federal law, the Court must employ the state standard regarding prejudgment interest and ignore the federal approach to the matter. See Conway v. Electro Switch Corp., 825 F.2d 593, 602 (1<sup>st</sup> Cir. 1987).

Maine law does not explain what amounts to “good cause” under section 1602, but the Maine Law Court has ruled that waiving prejudgment interest is appropriate in two types of circumstances: when the victorious plaintiff caused undue delay in the proceedings, or when the prevailing plaintiff on an insurance claim already has received the maximum recovery under the terms of the relevant insurance policy. See Moholland v. Empire Fire & Marine Ins. Co., 746 A.2d 362, 364 (Me. 2000); Trask v. Auto. Ins. Co., 736 A.2d 237, 238 (Me. 1999); Pierce v. Cent. Me. Power Co., 622 A.2d 80, 85 (Me. 1993); Sawyer v. Walker, 572 A.2d 498, 499 (Me. 1990); Nunez v. Nationwide Mut. Ins. Co., 472 A.2d 1383, 1384 (Me. 1984).

Defendant argues that the Court should waive prejudgment interest because not only has Plaintiff been made whole by the jury's verdict, but also any award of prejudgment interest would exceed the statutory limit on Plaintiff's award under the Maine Human Rights Act, 5 M.R.S.A. § 4613(2)(B)(8)(e)(iv). As discussed above, the issue of whether or not Plaintiff has been made whole by the jury award is irrelevant when analyzing prejudgment interest on state claims as compared to federal claims. See Conway, 825 F.2d at 602. Defendant's second argument, however, has some merit.

The Maine Human Rights Act has established a cap on the total sum of compensatory and punitive damages of \$300,000, which coincidentally is the total amount of the jury award in the present case. See 5 M.R.S.A. § 4613(2)(B)(8)(e)(iv). Defendant correctly points out that the Maine Supreme Judicial Court has characterized prejudgment interest as an element of compensatory damages. See Moholland, 746 A.2d at 364; Trask, 736 A.2d at 238; Nunez, 472 A.2d at 1384. In each of these cases, the Law Court found that the insured plaintiff was not entitled to receive prejudgment interest on his recovery against the insurer because that would have awarded the plaintiff an amount greater than the policy's limit. In the within case, any award of prejudgment interest would cause the total sum of compensatory and punitive damages to exceed \$300,000, which the statute prohibits.

The Court concludes that if the Maine Law Court approves waiving prejudgment interest based on a damages cap in an insurance policy, the Law Court also would hold that waiver of prejudgment interest is proper when based on a statutory damages cap. See, e.g., Moholland, 746 A.2d at 364. Based on the amounts of compensatory and punitive damages already awarded Plaintiff by a jury verdict, the Court finds that



Defendant has made a showing of good cause that Plaintiff is not entitled to prejudgment interest. Thus, the Court fully waives prejudgment interest.

#### D. Injunctive Relief

Pursuant to the Maine Human Rights Act, the Court has the authority to grant equitable relief. Because the Court finds that Defendant unlawfully retaliated against Plaintiff, and because Plaintiff continues to work as an employee of Defendant, the Court finds it necessary to order that Defendant cease and desist from any future unlawful retaliation against Plaintiff. See 5 M.R.S.A. § 4613(2)(B)(1).

#### V. CONCLUSION

For the foregoing reasons, the Court DENIES in part and GRANTS in part Plaintiff's Motion. First, the Court ORDERS that Plaintiff is not entitled to an award of back pay. Second, the Court ORDERS that prejudgment interest is fully waived.

Third, the Court hereby ORDERS that effective immediately, Defendant Bell Atlantic Corporation, by and through its officers, directors, employees, servants, and other agents, CEASE AND DESIST from committing, condoning, permitting, creating or allowing unlawful employment retaliation against Plaintiff David Bishop.

SO ORDERED.

---

GEORGE Z. SINGAL  
United States District Judge

Dated this 27th day of February 2001.

DAVID C BISHOP

MARTHA S. TEMPLE

plaintiff

[COR LD NTC]  
FOOTE & TEMPLE  
P.O. BOX 1576  
157 PARK STREET  
BANGOR, ME 04402-1576  
(207) 990-3430

v.

BELL ATLANTIC CORPORATION      FRANK T. MCGUIRE

defendant

947-4501  
[COR LD NTC]  
JOHN W. MCCARTHY  
947-4501  
[COR]  
RUDMAN & WINCHELL  
84 HARLOW STREET  
P.O. BOX 1401  
BANGOR, ME 04401  
(207) 947-4501

BARRY A. GURRYAN, ESQ.  
[COR LD NTC]  
STEPHEN B. REED, ESQ.  
[COR]  
EPSTEIN, BECKER & GREEN, P.C.  
75 STATE STREET  
BOSTON, MA 02109  
617/342-4000